IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3172 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

KANIAYALAL S TRIVEDI

Appearance:

1. Special Civil Application No. 3172 of 1989

NOTICE SERVED for Petitioner No. 1

MR DR BHATT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 12/02/2004

ORAL JUDGEMENT

Earlier late Shri G.N.Desai was appearing as an advocate on behalf of the petitioner Corporation. Since learned advocate Mr.G.N.Desai expired, this Court has

issued notice on the Corporation but despite that, no appearance is filed on behalf of the petitioner Corporation. As such, no legal officer nor any competent officer is present on behalf of the corporation before this Court at the time when this matter is called out. However, learned advocate Mr.D.R.Bhatt appearing on behalf of the respondent workman is present. But considering the fact that the matter is of the year 1989, pending before this Court awaiting final hearing, this Court is inclined to proceed with the matter.

2. In the present petition, the petitioner Corporation has challenged the award passed by the labour court, Nadiad in Reference No.47 / 1985 dated 22nd August, 1988, whereby the labour court has granted reinstatement while setting aside termination order with 50 % backwages of the interim period. Initially, this Court has issued Rule and notice as to interim relief returnable on 19th June, 1989 by order dated 2nd May, 1989. Thereafter, this Court has discharged notice for interim relief by order dated 27th July, 1989. Learned advocate Mr.D.R.Bhatt is also not in position to make any statement whether the award in question has been fully complied with by the petitioner Corporation since he is not having any latest information as the matter is very old of the year 1989. However, in above background, this Court is inclined to examine the merits of the matter.

3. The respondent was working as Driver having Badge No.19782 at Nadiad Division. He was in the Badali list and his name was in waiting list. That while working as Badali worker, on 12th October, 1981 one accident has occurred with the bus which was driven by the respondent. On the basis oft he said accident, by order dated December, 1981, the name of the respondent workman has been deleted from the waiting list of the driver category. In the said order, which is placed at page.11 by the Corporation, wherein the driver was found prima facie responsible according to the Corporation. This order of termination of the respondent workman challenged by him before the labour court in Reference No.47 / 1985 and the Assistant Commissioner of Labour has referred the matter for adjudication on 22nd October, 1984. According to the respondent workman, he was working as Badali Driver at Vasad Depot for more than one year and he was not responsible in the accident occurred on 12th October, 1981. However, his grievance is, before terminating service or deleting the name of the respondent workman from the waiting list, no opportunity was given to the respondent by the Corporation. As such, no departmental

inquiry was held against the respondent and without following the priciples of natural justice, the name of the respondent workman has been deleted from the waiting list of the driver category. The stand taken by the Corporation before the labour court that once show cause notice dated 27th November, 1981 was issued to the respondent workman, which was replied by the workmen on 30th November, 1981 and therefore the order of deleting the name of the respondent workman from the waiting list, has been passed by the Corporation, the principles of natural justice has been complied with by the Corporation. Before the labour court, the respondent workman was examined vide Exh.13 and vide Exh.10 the decision of the criminal case has been produced on record and thereafter Corporation has produced a copy of the show cause notice and reply and the decision on record vide Exh.6. Thereafter the labour court has examined the merits of the matter. The labour court has come to the conclusion that looking to the show cause notice, service of the workman has been terminated on the basis of the misconduct alleged against the respondent workman but prior thereto, no departmental inquiry was initiated against the respondent workman and as such, no reasonable opportunity was given to the respondent workman before termination of his service. Even in criminal case also, the respondent workman was declared acquittal and therefore, ultimately the labour court has come to the conclusion that the termination order is passed by the Corporation contrary to the principles of natural justice and therefore, the same required to be set aside. The labour court has considered the question of backwages and keeping in mind only one year service and working as driver during the interim period, wherein the workman has admitted that he was doing some miscellaneous work of driving the vehicle, the labour court was pleased to grant 50 % backwages of the interim period. The petitioner corporation has not proved any gainful employment of the respondent workman. Considering all these facts and circumstances and the finding given by the labour court, it is undisputed fact between the parties that show cause notice was served on the respondent workman for the misconduct alleged against the respondent workmen that he met with an accident due to careless and negligent driving, but for that, regular departmental inquiry was not initiated and no other reasonable opportunity was given to the workman and therefore, the order which has been passed by the petitioner, is held to be contrary to the principles of natural justice.

4. In such circumstances, the order of termination

has been rightly set side by the labour court. Even in case of Badali worker, if any misconduct has been alleged and for that, if service has been terminated, then regular departmental inquiry is necessary. Such view has been taken by the Division Bench of this Court in case of G.S.R.T.C V. G.RASADIYA reported in 1993 [1] GLR 442. The relevant observations made by the Division Bench of this Court in para-14 are quoted as under :-

> "14. In view of the aforesaid decisions, it would be difficult to uphold the contention raised by the learned Advocate for the petitioner that in these cases the petitioner was no required to hold an elaborate inquiry for the misconduct of the respondent Conductors. In both the petitions the Conductors' names are removed from the waiting list on the alleged ground of misappropriation of bus ticket fare as it is alleged that at the time of checking the buses on the relevant dates the Conductors had not issued the tickets after recovering fare and on such other grounds. In both the cases the Conductors have denied the allegations made against them. Inspite of this, the petitioner has not held any further inquiry. As both the Conductors have denied the allegations made against them, further inquiry out to have been held and the department ought to have adduced evidence in support of the charges, and the delinquents ought to have been permitted to put relevant questions by way of cross examination if they desired. They also ought to have been given further chance to lead evidence in support of their case. In our view, this would be the barest requirement of holding an inquiry in this type of grave misconduct. In the present case Bus Conductors are not removed on account of unsuitability. If they are removed without casting any stigma, then in that case further inquiry is not necessary. In this view of the matter, it cannot be said that the order passed by the Labour Court calls for any interference."

5. In view of above observations made by the Division Bench of this Court and considering the fact that service of the workman has been terminated on the basis of the allegations of reckless and careless driving, for that, no regular departmental inquiry was initiated and therefore, according to my opinion, the labour court has rightly set aside the termination order

and granted relief in favour of the workman. While considering this fact also, one important aspect is that initially, this matter wherein the Rule has been issued by this Court, no interim stay has been granted by this Court. Naturally, according to my opinion, with the passage of time for more than twelve years, award in question must have been complied with by the Corporation but in absence of the details available with the learned advocate Mr.Bhatt and the fact that none remains present before this Court on behalf of the petitioner, this Court is not having correct details on record. Therefore, while keeping in mind this fact also, according to my opinion, the labour court has not committed any error while passing such award and there is no procedural irregularities committed by the labour court and therefoer, no interference of this Court is called for while exercising the powers under Article 227 of the Constitution. Therefore, there is no substance in the present and the same fails and hence, the same is rejected accordingly.

Rule stands discharged with no order as to costs.

Date : 12.2.2004 [H.K.Rathod, J.]

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